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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.401 OF 2006

Parasmal Kachardas Choradia Appellant
versus
Mukund Shridhar Ware & ors. Respondents

Mr.Rahul Matkari i/by V.Z.Kankaria for appellant
Mr.G.S.Godbole for respondent no.2.
Ms.Leena Patil for respondents 1, 3 to 8.

CORAM : A.S.OKA, J.

DATE : 20th April 2007

PC :

1. A request is made on behalf of the appellant for adjournment on the ground that Shri Kankaria appearing for the appellant is not available. The learned advocate for the second respondent has tendered an affidavit which is taken on record and marked "X" for identification. In the said affidavit it is stated that the second respondent does not desire to press the application at Exhibit-71 filed in Special Civil Suit No.255 of 2004. A statement to that effect has been specifically made in paragraph no.4.

2. The order impugned in this Appeal from Order is dated 5th April 2006 by which the application made by the second respondent at Exhibit-71 has been allowed and the appellant is directed to hand over the possession of the flat in dispute to the second respondent. In view of the statement made in paragraph no.4 of the affidavit of the second respondent, the impugned order dated 5th April 2006 will have to be set aside and application at Exhibit-71 will have to be dismissed as not pressed. A prayer has been made in the affidavit for a direction to the Trial Court to decide the Special Civil Suit expeditiously as second respondent needs the suit premises.

3. Hence, I pass following order :-

(a) The statement made in paragraph no.4 of the affidavit of the second respondent is accepted. In view of this statement, the impugned order dated 5th April 2006 is quashed and set aside and application at Exhibit-71 made by the second respondent stands dismissed as not pressed;

(b) The appeal is accordingly allowed;

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(c) All contentions of parties on merits of the suit are expressly kept open;

(d) The Trial Court is directed to decide the suit as expeditiously as possible and preferably on or before 31st December 2007;

(e) Parties and all concerned to act on an ordinary copy of this order duly authenticated by Registry of this Court.

(A.S.OKA, J.)